REMARKS

Claims 1–19 are pending and all claims are rejected.

Double Patenting

Claims 1-19 are rejected under the judicially created doctrine of provisional double patenting as being unpatentable over claims 8-13 and 16-23 of copending U.S. Patent Application Ser. No. 10/742,048.

A terminal disclaimer with regard to U.S. Patent No. 7,139,807 (which corresponds to Application Ser. No. 10/742,048) is submitted herewith, obviating the double patenting rejection.

Rejection under 35 U.S.C. 103(a)

Claims 1–13 and 15–19 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,201,859 to Smith. Reconsideration and withdrawal of this rejection is respectfully requested in view of the following remarks.

As a preliminary matter, Applicant notes that U.S. Patent 6,201,859 is not issued to Smith, but rather is issued to Memhard et al. There is no Smith listed as an inventor of U.S. Patent 6,201,859. Applicants assume that the rejection is over U.S. Patent 6,128,649 by Smith, as this patent appears to coincide with the reasons for the rejection articulated in the Office Action. Thus, this response is written under the assumption that U.S. Patent 6,128,649 by Smith is the basis of the rejection.

Applicant also notes that this response only addresses the rejection independent claims 1, 7, and 9 over Smith. As the Examiner will appreciate, if the independent claims are shown to be patentable over the prior art, then narrower dependent claims are by definition patentable over the same art. Applicant reserves the right to make additional arguments regarding the patentability of the dependant claims at a later time, if necessary.

Rejection of Claim 1: To establish a prima facie case of obviousness, the prior art reference or combination of references must teach or suggest all the claim limitations. *See* MPEP 2143. Claim 1 includes the limitation:

> a policy manager, the policy manager applying a predetermined policy to generate the output control signal ***wherein the predetermined policy depends at least in part on one or more labels associated with the one or more media outputs*** and indicative of a role of the one or more media outputs, and the policy manager providing the output control signal to the plurality of output switches, whereby the media display is controlled according to the predetermined policy

The Examiner has admitted "Smith does not explicitly teach using a signal selection policy that depends upon signal ID/labels." *See* Office Action dated August 30, 2006, page 4. Thus, by the Examiner's own admission, Smith fails to teach a limitation of claim 1. As a matter of law, Smith therefore cannot be used as the sole reference to support a *prima facie* case of obviousness because Smith fails to teach a limitation of the claim. The Examiner must provide some concrete evidence to support the conclusion that it would have been obvious to one of ordinary skill in the art to use signal ID/label in a signal selection policy. *See In re Zurko* 258 F.3d 1379, 1386 (Fed. Cir. 2001) ("With respect to core factual findings in a determination of patentability, however, the Board cannot simply reach conclusions based on its own understanding or experience -- or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings. To hold otherwise would render the process of appellate review for substantial evidence on the record a meaningless exercise.").

The Examiner's admission that Smith fails to teach a limitation of claim 1 and the Examiner's failure to cite any additional evidence to support the rejection under 103(a) should end all discussion of an obviousness rejection over Smith as the sole reference. However, Applicant will address the Examiner's assertion that the claim 1 would be obvious in view of Smith.

In the previous Office Action, the Examiner admitted that Smith does not disclose using a stream tag label to identify media stream types. *See* Office Action dated June 1, 2006, page 3. The Examiner referenced Post to provide this limitation. *Id.* Now the Examiner would seek to withdraw the earlier admission and contend that Smith does teach a stream tag label, referencing col. 17, lines 1-41 of Smith. However, this section of Smith does not teach labels associated with one or more media outputs and indicative of a role of the one or more media outputs. The referenced section of Smith only refers to messages sent by a conference aware module and does not refer to labels associated with one or more media outputs.

Furthermore, given the Examiner's admission that Smith does not teach using a signal selection policy that depends upon signal ID/labels, it makes no sense to allege that Smith teaches such labels, as these labels would be useless without a selection policy to make use of them. Likewise, even if the Examiner cited a secondary reference teaching labels, one of skill in the art would not be motivated to combine the reference with Smith, given the Examiner's admission that Smith does not teach a selection policy that can make use of such labels.

Rejection of Claims 7 and 9: Both claims 7 and 9 include limitations that recite that a policy depends at least in part on one or more labels associated with the one or more media outputs. Claims 7 and 9 are thus non-obvious over Smith for the reasons recited with regard to claim 1.

In view of the foregoing remarks, it is believed that each of the pending claims 1–19 is in condition for allowance. Withdrawal of the rejections and a notice of allowance for these claims is therefore requested. The Examiner is invited to contact the undersigned by telephone if the Examiner that would be helpful for moving the case toward issue.

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Respectfully submitted,

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Date

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